United States Court of Appeals

for the Second Circuit

APPELLANT'S BRIEF

74-2670

B

P/S

IN THE

United States Court of Appeals

FOR THE SECOND CIRCUIT

HESTER MAGGETT, ET ALS
Plaintiff-Appellees,

v.

NICHOLAS NORTON
Defendant-Appellant.

On Appeal from a Decision of The United States District Court, District of Connecticut

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BRIEF OF APPELLANT

CARL R. AJELLO
Attorney General
30 Trinity Street
Hartford, Connecticut

FRANCIS J. MACGREGOR
Assistant Attorney General
90 Brainard Road
Hartford, Connecticut

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ISSUES PRESENTED

1. Does the method used by the Appellant to notify recipients of Aid to Families with Dependent Children to come in person to the Welfare District Office for a redetermination of eligibility interview violate the Due Process Clause of the Fourteenth Amendment?

2. Was there any substantial evidence presented in the lower court to substantiate any claim by the plaintiffs that they suffered a "grievous loss" when they were terminated from AFDC for failure to appear for a redetermination of eligibility hearing?

3. Did the testimony support the plaintiffs' claim that they did not receive notice to appear for their redetermination of eligibility interview?

STATEMENT OF THE CASE

1. The Appellant, Welfare Commissioner, is required by Federal regulations to redetermine eligibility of Aid to Families with Dependent Children recipients every six (6) months [45 C.F.R. 206(a)(9)(iii)].

2. The Connecticut AFDC case load as of May 1, 1974, was 35,000 families (Partial Stipulation of Facts, Paragraph 5, Appendix Page 22a)

3. The Defendant's employees went to New York State which had a face-to-face redetermination of eligibility plan to see how New York's plan worked.

4. Since having started the face-to-face redetermination of eligibility interviews, the Connecticut Welfare Department has found that it is a better method of redetermining eligibility than the old telephone method.

5. The Department of Health, Education and Welfare informed the Connecticut Welfare Department that their error rate of ineligibles for AFDC was 5 per cent and their overpayment to welfare recipients was 17 per cent (Appendix Page 29a, T 158)

6. The Welfare Department set up the following method for notifying AFDC recipients to come in for a face-to-face redetermination of eligibility interview:

a. A special flyer went out to all AFDC recipients in both their April 1st and May 15th, 1974 checks alerting them to the fact that there would be a personal interview for redetermination of eligibility sometime in the future. (Defendant's Exhibit 3 and 4, Appendix Page 29a, T 167)

b. At least twelve (12) days before the interview was to be heard, the AFDC recipient was notified by first class

mail of the time, date and place of the interview. (Defendant's Exhibit 5)

c. These notices went out to the same address where the recipient had received his last semi-monthly welfare check. (Appendix Page 29a, T 191)

d. All undelivered mail was returned to a central office address and carefully rechecked to see if it needed an up-dated address and then remailed if necessary; or checked to see if the recipient had been discontinued for other reasons in the interim. (Appendix Page 30a, T 180)

e. If the recipient did not show up for the interview, she was sent a form 848 on that date telling her that she would be discontinued in ten (10) days if she did not request an evidentiary hearing. (Plaintiffs' Exhibit A-1. Appendix Page 30a, T 183)

f. With 848, a flyer was sent telling the recipient to call a certain number, which, if called, the recipient remained on the welfare rolls and another appointment for the interview was made. (Defendant's Exhibit 7. Appendix Page 30a, 31a, T 63)

g. If the recipient came in with the 848 within the ten (10) day period, they were not terminated, but instead were given an appointment or interviewed. (Appendix Page 39a, T 73)

h. If the recipient took no action at all a 52T was sent to them at the end of this ten (10) day period terminating them after which they received one more check. (Appendix Page 31a, T 70)

7. In the three month period from June 1, 1974 through August 31, 1974, 17,935 notices were sent out to the recipients,

16,474 interviews were fully processed, 1,940 cases were discontinued of which 492 cases came in for their redetermination interview and were found not eligible and 1,448 cases did not come in for an interview at all and were terminated. (Partial Stipulation of Facts, Paragraphs 7, 8. Appendix Page 23a)

8. Of the persons discontinued because of the redetermination process, approximately 20 to 25 per cent of those discontinued during this three months because of the redetermination process re-applied. (Appendix Page 31a, T 17)

9. There are many reasons why these 1,448 discontinued cases did not bother to go for a redetermination interview. There were such reasons as their husbands were now at home, that they were now working or that they were moving out of the state. (Appendix Page 31a, 32a, T 211, 212)

10. Of the 17,935 notices that were mailed out during the total three month period, 637 were returned as nondeliverable on the first mailing. (Appendix Pages 32a-34a. T 180, 181, 190, 195)

11. Of these 637 returns from the first mailing, 167 were found to have been discontinued or otherwise handled in the district office. (Appendix Pages 32a-34a. T 180, 181, 190, 195)

12. Of the 470 that had to be remailed, only 51 were returned as undeliverable as a result of the second mailing. (Appendix Pages 32a-34a. T 180, 181, 190, 195)

13. This system used by the Department showed that all of the 1,448 persons who did not show for the interview had received notice. (Appendix Page 55a. T 11, 12)

14. In the previous year, from March, 1973, through August, 1973, the Welfare Department discontinued an aver-

age of 783 AFDC cases per month. (Appendix Page 34a, T 187, 188)

15. As a result of the face-to-face interviews, the number rose to 1,024 per month. (Appendix Page 35a. T 187, 188)

16. Those recipients who were discontinued were immediately eligible for general assistance from the towns. (Appendix Page 35a, T 193)

17. The general assistance level of benefits for the named plaintiffs was the same level as that given by the State. (Appendix Page 35a. T 12)

18. Seventy-seven (77) AFDC families who were discontinued during this three month period for failure to appear for a redetermination hearing applied for general assistance from the City of Hartford. (Appendix Page 35a. T 193)

19. During this same period, the State Welfare Department's office for the Hartford District Office notified 3,973 recipients to come in for a redetermination interview. (Appendix Page 36a. T 194)

20. All of these 77 (80) discontinued families were fully processed for general assistance by the City of Hartford within one to three days from the date they applied for general assistance. (Appendix Page 36a. T 28, 29)

21. If the recipient was in dire need for food because of a three day wait, they were served by agencies such as the Salvation Army. (Appendix Page 36a. T 28, 29)

22. The City of Hartford's Welfare Department uses first class mail to notify recipients that they are being discontinued. (Appendix Pages 36a, 37a. T 27)

23. The plaintiffs' expert considered this an adequate method of notice. (Appendix Pages 36a, 37a. T 27)

24. The defendant's expert considered first class mail an adequate method of notice in requesting recipients to appear for redetermination of eligibility interviews. (Appendix Page 37a. T 199)

25. Welfare checks are delivered to welfare recipients by first class mail. (Appendix Page 37a. T 172)

26. The AFDC recipients have a pamphlet available at the Welfare Department which tells them of their rights and responsibilities under the AFDC program, and this pamphlet includes information telling the recipient to give the Department any changes of address immediately, and also the fact that he will participate in the redetermination of his eligibility. (Defendant's Exhibit 6)

27. The named plaintiffs received their April 1, 1974, and May 15, 1974, welfare checks. (Appendix Pages 37a, 38a, T 52, 70, 71)

28. All the named plaintiffs received their semi-monthly check immediately before getting their notice to come in for a redetermination of eligibility interview, which check was mailed to them within fifteen (15) days of the date of the mailing of the notice. (Appendix Page 38a, T 59)

29. All the named plaintiffs received their AFDC welfare check at the same address within fifteen (15) days after the notice of redetermination of eligibility had been mailed to them. (Appendix Page 38a, T 73)

30. None of the redetermination of eligibility notices that were mailed to the named plaintiffs were ever returned by the Post Office as undelivered. (Appendix Page 38a, T 73)

31. If any of the named plaintiffs had come in to the Welfare Department within the ten (10) day period after they had received the 848, they would not have been terminated but given another interview date or an interview. (Appendix Page 39a, T 73)

32. The named plaintiff, Linda Maxwell, had a postal mail box in her hallway and always received her mail. (Appendix Page 39a, T 58)

33. It is difficult and time consuming to try to contact recipients by phone during the hours when the Welfare Department is open. (Appendix Page 39a, T 153)

34. First class mail was used to notify the recipients to come in for their redetermination of eligibility interviews because first class mail is used in mailing checks and the Department's experience is that recipients generally get their checks. (Appendix Pages 39a, 40a, T 31)

35. It was the defendant's expert's opinion, and also judicially noticed by the Court, that certified or registered mail is not a better method of notifying recipient than the use of first class mail because AFDC recipients normally won't sign or accept certified or registered letters. (Appendix Page 40a, T 33)

36. The mailing addresses of AFDC recipients are updated on the computer on an on-going basis. (Appendix Page 40a, T 39)

37. It was the experience of the defendant's expert that even if welfare workers personally went out to see welfare recipients to inform them to come in for an interview there would be some recipients who would not come in until they did not receive their check. (Appendix Page 40a, T 60)

38. The Welfare Department does not have the available automobiles or personnel to go out in the field to visit clients and tell them to come in to the office for interviews. (Appendix Page 41a, T 60)

39. Of the 1,448 cases who did not show up for the interview, only 30 cases could not be accounted for as either not calling or contacting the office to inform the Department that they did not need the interview. (Appendix Page 41a, T 207)

40. It was the defendant's expert's opinion that the 20 to 25 per cent of the cases discontinued who reapplied is not exceptional because recipients who are discontinued come back on for many reasons. (Appendix Page 41a, T 57, 58)

ARGUMENT

I.

THE METHOD USED BY THE APPELLANT TO NOTIFY RECIPIENTS OF AID TO FAMILIES WITH DEPENDENT CHILDREN TO COME IN PERSON TO THE WELFARE DISTRICT OFFICE FOR A REDETERMINATION OF ELIGIBILITY INTERVIEW DOES NOT VIOLATE THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT.

The lower court found that the method used by the Appellant, Welfare Commissioner, in notifying AFDC recipients to personally come in for a redetermination of eligibility interview at the welfare district offices violated the Due Process Clause of the Fourteenth Amendment.

The court came to this conclusion because it made two incorrect factual findings, which findings had no support in the evidence presented during the trial. The first erroneous finding was that the method of notifying recipients resulted

in a "high percentage of erroneous terminations." The second error, which will be discussed more fully later in the brief, was that the method of notice actually deprived "an eligible recipient of the very means by which to live", and thus fitted into the factual context of *Goldberg* v. *Kelly*, 397 U.S. 254.

Finally, the lower court came to the conclusion that, because three recipients out of 17,935 AFDC cases who were mailed notices to come in for an interview during the three month period claimed that they did not receive this notice sent by first class mail, the Welfare Department has set up an irrebuttable presumption that all recipients did receive notice, and this irrebuttable presumption of receipt of first class mail has, therefore, denied the named plaintiffs, and the class they represent, due process.

It appears to have become fashionable in recent years to frame civil rights claims within this doctrinal rubric of irrebuttable presumption in view of the rulings in *Vlandis* v. *Kline*, 412 U.S. 441 and *Stanley* v. *Illinois*, 405 U.S. 645. But, these cases are not analogous to the situation presented in this civil action as they involved differences in treatment among fairly similar groups. In the present case the same method was used in contacting all recipients, and out of 17,935 notices mailed out, only 51 notices were finally returned as undeliverable, the *named plaintiffs* were not included among these 51 notices of undelivered mail.

The Due Process Clause is not a balancing act. It is not the court's function to weigh whether its idea of how notice should be given is a better procedure than that used by the Appellant, Welfare Commissioner.

Although due process has been characterized as an elusive concept, the basic test appears to be whether or not the actions, taken by a state official, are ones that would be considered fair and reasonable by total community standards.

To show a violation of due process, the plaintiffs must show an absence of that "fundamental fairness essential to that very concept of justice." *Lisenba* v. *California,* 314 U.S. 219, 236.

Because a few persons in the community may be dissatisfied with the method of notice used by the Appellant and challenge it on due process grounds, that does not give any particular legal sanctity to their constitutional claim.

> "Due process is not measured by the yardstick of personal reaction or the sphygmogram of the most sensitive person, but by those whose community sense of decency and fairness has been woven by common experience into the fabric of acceptable conduct." *Breithaupt* v. *Abram,* 352 U.S. 432, 436.

If the method the Appellant used to give notice was one well accepted by the community over a long period of time, the Appellees must present a strong case to establish a due process case.

> "The fact that a procedure is so old as to have become customary and well established in a community is of great weight in determining whether it conforms to due process for 'not lightly vacated is the verdict of quiescent years'." *Anderson National Bank* v. *Luckett,* 321 U.S. 233, 244.

Further, the burden of showing this procedure violates the test of "essential fairness rests on the person attacking it to clearly demonstrate its essential unfairness". *Adams* v. *U.S. ex rel McCann,* 317 U.S. 269, 281.

Added to these tests of due process are the repeated admonitions of the Supreme Court that in the fields, which involve social and economic programs, the Federal judiciary

should not "sit to subject the state to an intolerable burden, hostile to the basic principles of our government, and wholly beyond the protection which the general clause of the Fourteenth Amendment was intended to secure". *Ferguson* v. *Skrupa,* 372 U.S. 726, 730. See also *Richardson* v. *Wright,* 405 U.S. 208.

The test in this case finally comes down to whether the procedure used by the Appellant of notifying recipients by first class mail to come in for their face-to-face redetermination of eligibility interviews satisfies due process.

The use of first class mail to deliver important public correspondence has been long recognized as a proper fair method of giving notice to the addressee of the sender's intention. It is a method used by municipal, state and federal agencies in the handling of important mail. It is such a well recognized and established method that for over a century in Connecticut the mailing of letters by first class mail has given rise to the strong presumption that the letter was received and read by the person to whom it was addressed. *Pitts* v. *The Hartford Life and Annuity Insurance Company,* 66 Conn. 376, 384.

This strong presumption has also been recognized by the federal courts over a long period of years. *Federal Insurance Company* v. *Summer,* 403 F.2d 971, 975. *Crude Oil Corporation of America* v. *Commissioner of Internal Revenue,* 161 F.2d 809, 810.

Because three persons out of 17,935 persons notified to come in for an interview claim they did not receive notice, should never justify the Court to come to the conclusion that there was a high percentage of erroneous terminations. There was not one scintilla of testimony presented at the trial that anyone, with the exception of the three-named plaintiffs, was terminated because of failure to receive notice. Even the

plaintiffs' expert, Henry Ora, who testified about the 80 reapplications for general assistance in the City of Hartford, gave no testimony that the other 77 reapplications from persons terminated from AFDC for failure to show up for a redetermination of eligibility interview, resulted from a lack of receiving notice. The Appellant's expert gave many reasons why persons, who are terminated, might reapply during a three month period, and none of these reasons were because of failure to receive notice. It should be further noted that the plaintiffs' expert, Mr. Ora, considered the use of first class mail to notify recipients of termination of eligibilty for general assistance as a reasonable method.

The lower court's problem was, because 1,448 out of 16,474 processed cases were discontinued for failure to appear for the interview, that these 1,448 discontinuances had to be erroneous terminations. This is simply not true. The uncontradicted testimony of Mrs. Connell, the Appellant's expert, was that many of these 1,448 persons called in or walked in to the district office and said that they did not need an interview and could be discontinued. This amount of discontinuances was consistent with the 5 per cent average of uneligible AFDC recipients that the Department of Health, Education and Welfare's quality control survey had discovered.

The fact that 20 to 25 per cent of the discontinued cases reapplied for welfare does not mean that these terminations were erroneous. This was only an average of 437 out of the total of 1,940 discontinued or 437 out of the total 16,474 processed. In any three month period, which is one-fourth of a year, the income situations involving welfare families change drastically. Many recipients go off and reapply for welfare on a continuing basis. As Mrs. Connell testified, this is not unusual. Former recipients lose jobs and have to reapply. Husbands of former recipients fail to pay court ordered support

and alimony payments, and former recipients have to reapply. Former recipients return to the state and reapply.

More importantly, the Court should note that this reapplication figure of 437 out of 16,474 during a three month period was only about 2.7 per cent of the caseload processed. Based on the Hartford figure of 77 or 80 reapplications out of 3,973 processed for the Hartford office, the percentage is the same, about 2 per cent. For 2 per cent of a caseload to reapply during a three month period is not unusual and there was *no testimony presented by the plaintiffs to rebut Mrs. Connell's testimony on this fact.*

The process used by the Appellant to notify the AFDC recipients was a reasonable one. The recipients were notified by two flyers, mailed with their checks of April 1, 1974 and May 15, 1974, which told them that there would be face-to-face redetermination of eligibility interviews. They were, therefore, on notice in advance that this process would take place.

The actual notice to appear for the interview was sent to the recipient's most recent address, the address at which they had received their last check. If the notice was returned to the central mailing location, it was remailed to any updated address after rechecking with the district office, or it was ascertained that the recipient had gone off welfare at that time. If the recipient did not show for the interview, a Form 848 entitled Notice of Discontinuance was sent out to the recipient. Enclosed with the 848 was a flyer notifying the recipient to call a certain number and get another appointment for his interview. If he called the number, he was not discontinued but was given another date for his interview. The 848 form gave the recipient ten days in which to ask for an evidentiary hearing. If the recipient asked for an evidentiary hearing, he would not be terminated. After the ten days had

passed, the recipient was finally sent a Form W-T52 notifying him of termination.

It has been suggested that the Appellant use personal notice to alert those recipients who have not shown for their interview. Because the Appellant has finite funds, and has neither the automobiles nor the personnel to do this job, any requirement that he give personal notice to the recipients will result in a diminution of services and money for other necessary programs. Further, there is no guarantee that this method will be an improvement over first class mail. Also, there is no testimony supporting the court's order that the defendant use certified mail. In fact, the testimony, which was supported by comments by the lower court, indicated that welfare recipients usually will not pick up certified mail.

A big problem in carrying out the court order is the extra delay that will result in removing clearly ineligible persons from the welfare rolls. Many of these ineligibles do not show up for the interview, and the Appellant was able to remove them promptly from the AFDC welfare roll. Under the new system, the Welfare Commissioner will have to send all of these persons certified mail which may either not be accepted or may be signed for by someone else in the house who is not the ADC recipient. If this latter happens, the recipient can still claim failure to receive notice. In those cases where the certified mail is not accepted, the Court order makes the Welfare Commissioner send employees out in the field to see the recipient. If they still don't show up, he has to comply with the fair hearing regulations in 45 C.F.R. 205.10 giving the recipients another ten days before they can be removed from welfare. The result of this extra time lag will be that many ineligible AFDC recipients will get an extra welfare check to which they are not entitled. This negates the very reason the system was set up to stop.

II.

THERE WAS NO EVIDENCE PRESENTED IN THE LOWER COURT TO SUBSTANTIATE ANY CLAIM THAT THE PLAINTIFFS SUFFERED ANY "GRIEVOUS LOSS" WHEN THEY WERE TERMINATED FROM AFDC FOR FAILURE TO APPEAR FOR REDETERMINATION OF ELIGIBILITY HEARING.

The lower court cited only one case, *Goldberg* v. *Kelly*, 397 U.S. 254, to support its decision. *Goldberg* has gone farther than any other case in extending the protection of due process, and that case seems to be based on the belief of the court that if certain procedural guarantees, such as a pre-termination hearing, are not given a welfare recipient before removal from welfare, he would suffer a much greater loss than a non-welfare plaintiff in the same instance because this termination "may deprive an eligible recipient of the very means to live while he waits". *Goldberg, supra,* page 264.

Further, the Goldberg court felt that the due process to be afforded the recipient must rise proportionately "by the extent to which he may be 'condemned to suffer grievous loss,' . . ." *Goldberg, supra,* page 262, 263, or where the recipient will suffer "brutal need". *Goldberg, supra,* page 261.

Unfortunately, the lower court cited not one scintilla of evidence to show that any of the named plaintiffs suffered any kind of a loss that could even begin to be characterized as "grievous" or "brutal". Nor was any testimony elicited in the two day trial from the named plaintiffs, or any other witnesses, to show that any of the plaintiffs, or the class which they claim to represent, had been deprived of the very means by which to live.

There was no testimony that any plaintiff was evicted, missed any meals, was refused medical treatment or suffered

any penalty because of their removal from AFDC, and it should be noted that the plaintiffs had ample opportunity to present this type of evidence, if, in fact, it existed. Not only was there no testimony as to any grievous loss, but the affidavits of the named plaintiffs attached to the complaint cited no losses of any kind suffered by the plaintiffs, and the only allegation in the complaint in paragraph 27 merely alleges a legal conclusion, a procedure frowned upon in 1983 actions.

What the testimony did show was that all of the plaintiffs were immediately eligible for general assistance from the towns in which they lived, and in fact, that the plaintiffs who desired to do so applied and received this general assistance. The general assistance was given at the same level as the AFDC program.

Of the 77 or 80 AFDC recipients in Hartford who applied, not one waited over three days for general assistance from the town, and many were processed and received assistance on the first day. Further testimony was presented by the plaintiffs' expert that if there was an emergency need for food, and the recipient could not be immediately processed, they were referred to a private agency for this emergency food need, and the private agency was reimbursed by the town. No testimony was ever presented that these 77 or 80 persons even needed the emergency aid.

Thus, the only conclusion that the lower court could have drawn from the testimony presented was that the recipients would suffer the inconvenience of going to the city welfare department to apply for general assistance while they were waiting for their reapplications for AFDC to be processed. Inconvenience cannot be equated with a grievous loss which rises to the dignity of a constitutional deprivation.

The Appellant would also point out that we are concerned with the reasonableness of the method of notice given by the

Appellant. In *Goldberg,* the notice of termination of all welfare was sent by letter to the recipient, *Goldberg, supra,* page 259, and nowhere in that opinion is there any language that a first class mailed letter is insufficient notice.

In fact, after *Goldberg* v. *Kelly,* the Department of Health, Education and Welfare twice changed the fair hearing procedures which would be given the AFDC recipient whose aid was discontinued, reduced or suspended. It is obvious from reading these fair hearing procedures that the notice was to be given by first class mail.

In the first regulation, 45 C.F.R. 205.10(a)(5)(i)(A) " 'timely' means the notice is *mailed* at least 15 days before the action is to be taken . . ." (Emphasis added) In the updated federal regulation, 45 C.F.R. 205.10(a)(4)(i)(A), " 'timely' mean that the notice is *mailed* at least 10 days before the date of action . . ." (Emphasis added) Thus, it would seem that the department charged with interpreting *Goldberg* v. *Kelly* assumed, and rightly so, that first class mail was a reasonably adequate means of notifying recipients of the discontinuance of what might be their very means by which to live.

Even *Goldberg* v. *Kelly* recognized that safeguards in cases, where the welfare department has an interest in speedy resolution of eligibility matters, may be minimal.

> "We wish to add that we, no less than the dissenters, recognize the importance of not imposing upon the States or the Federal Government in this developing field of law any procedural requirements beyond those demanded by *rudimentary due process." Goldberg, supra,* page 267 (Emphasis added)

Unquestionably, the Appellant's method of notifying the AFDC recipient complied to this standard.

III.

THE TESTIMONY DOES NOT SUPPORT THE PLAINTIFFS' CLAIM THAT THEY DID NOT RECEIVE NOTICE TO APPEAR FOR THEIR REDETERMINATION OF ELIGIBILITY INTERVIEW.

The testimony in the lower court should convince this Court that the named plaintiffs either did receive the notice to come in for their interview and did not read it, or that their nonreceipt of this notice was such an unusual occurrence that this Court must draw the conclusion that this nonreceipt could not have happened to any appreciable percentage of the recipients involved in the redetermination process.

We have only the testimony of the three-named plaintiffs that they failed to receive notice. No other testimony was presented by the other witnesses on behalf of the plaintiffs that any of the remainder of the 77 or 80 families discontinued in the Hartford area had been discontinued because of *failure to receive notice*. No testimony was presented that this failure to receive notice arose in any of the other 168 towns in the State of Connecticut.

This Court cannot speculate on the basis of the claims of 3 persons out of 16,474 cases that any other recipient failed to receive notice when there is only evidence that this failure occurred in 1 out of every 5,158 cases. This is simply too infinitesimally too small a sample upon which to draw any conclusions. Further, the burden of proving the fact that an appreciable percentage of the AFDC caseload, which was discontinued, did not receive notice rested with the plaintiffs. They have not satisfied this burden.

The Appellant also contends that the flat statements of the three-named plaintiffs that they did not receive their notices to appear for their redetermination of eligibility inter-

views, when considered in the light of their other testimony, plus that of other witnesses, is unbelievable. These three-named plaintiffs admitted receiving their semi-monthly welfare checks for April 1st and May 15th, 1974, but stated that they never saw the flyers (Defendant's Exhibits 2 and 3) that were contained in these same envelopes. They admitted that they received the checks immediately before and after the dates in which the notice for redetermination of eligibility were mailed to them. There is absolutely no claim that there would be a failure to receive mail because of a change of address because the three-named plaintiffs had received checks for several months at the same address to which the notices were mailed.

Their names were not included among the mail returned by the Post Office as undeliverable. There was no testimony presented that any of them had the experience of not receiving mail, or that there were any problems in the neighborhoods where they lived with the receipt of first class delivery. Miss Maxwell, who testified her mail box was in the hallway of her apartment, stated that someone once opened a letter from her sister; but because she knew about this incident, it was obvious the letter was delivered, and she received it.

Two of the three-named plaintiffs admitted receiving the 848 notice of the discontinuance (Plaintiffs' Exhibit A-1) and the 52T at the same address to which the notices had been sent, and the 848 would have been mailed on the date the named plaintiffs failed to show for the interview with the 52T being mailed ten (10) days after the mailing of the 848.

Even if the Court were to believe that this strange occurrence of failure to receive notice had occurred, this would be no reason for finding a due process violation thus forcing drastic changes in a system which had been carefully thought out by experienced merit system employees after watching

another state's success in the implementation of a similar program.

The Defendant has a finite welfare budget upon which there are an infinite number of demands. If he has to spend money on certified mail, and personal trips to see why recipients have failed to show up for redetermination interviews, and pay extra welfare checks to non-eligible recipients because of the extra time involved in using this cumbersome system, then there will be less money to use for those problems his expertise and experience show need priority. *Dandrige* v. *Williams,* 397 U.S. 471, 486, 487, has clearly held that the State Welfare Department, and not the Federal Courts, has the right to allocate its money to attack those problems the Department believes needs priority treatment.

CONCLUSION

The Appellant respectfully requests that the Judgment and Order of the Honorable T. Emmet Clarie, Chief Judge of the United States District Court for the District of Connecticut be reversed.

Respectfully submitted,

FRANCIS J. MACGREGOR
Assistant Attorney General

Attorney for the Appellant

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

HESTER MAGGETT, ET ALS Plaintiff-Appellees VS. NICHOLAS NORTON Defendant-Appellant	)	DOCKET NO: 74-2670 February 10, 1975

CERTIFICATION

This is to certify that two copies of the Brief of Appellant and one copy of the Appendix to the Brief of Appellant was mailed on the 10th day of February, 1975, to the following counsel of record:

Mary R. Hennessey, Esq.
Neighborhood Legal Services, Inc.
524 Albany Avenue
Hartford, Connecticut 06112

Barry S. Zitser, Esq.
758 New Britain Avenue
Hartford, Connecticut 06106

FRANCIS J. MAC GREGOR
Assistant Attorney General
90 Brainard Road
Hartford, Connecticut 06114

Attorney for Defendant-Appellant